

ENTERED

September 19, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

FLORENCIO CRUZ, III,

Plaintiff,

VS.

ARMANDO CHAPA, *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:23-CV-00153

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court is Plaintiff's complaint (D.E. 1, 15, 16) for initial screening. On August 18, 2023, United States Magistrate Judge Jason B. Libby issued a Memorandum and Recommendation (M&R, D.E. 17), recommending that Plaintiff's action be dismissed with prejudice as frivolous and for failure to state a claim pursuant to 28 U.S.C. §§1915(e)(2) and 1915A(b)(1). Plaintiff was provided notice and an opportunity to object to the M&R on or before September 1, 2023.

Plaintiff did not timely file any objections. Instead, on September 6, 2023, he placed in the mail a document entitled "To Proceed Complaints" (D.E. 18), which the Clerk of Court docketed as a supplement to his complaint on September 11, 2023. The Court has reviewed this document and finds that it purports to present objections to the M&R.

However, Plaintiff merely re-urges the claims that the Magistrate Judge has recommended be denied. Plaintiff does not specify any error in the M&R's analysis and does not provide any authorities to the contrary of the recommendations. Consequently,

they do not constitute cognizable objections to the M&R. Fed. R. Civ. P. 72(b)(2); *Malacara v. Garber*, 353 F.3d 393, 405 (5th Cir. 2003); *Edmond v. Collins*, 8 F.3d 290, 293 n.7 (5th Cir. 1993) (finding that right to de novo review is not invoked when a petitioner merely re-urges arguments contained in the original petition).

Plaintiff also asks the Court to subpoena his grievances along with other documents that he claims will support his allegations that he provided the detention center with notice of his medical needs and their response was cruel and unusual punishment. Pursuant to the standard of review, the M&R already took the fact allegations as true and further proof is neither necessary nor sufficient to reach a different result.

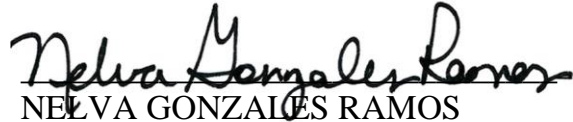
Plaintiff also asks the Court to excuse his late filing, faulting the prison mail room for delivering his notice of the M&R late. The Court has taken his late-filed document into consideration. However, any objections that Plaintiff has attempted to state are **OVERRULED** as insufficient and argumentative.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Plaintiff's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge.

Accordingly, Plaintiff's complaint IS **DISMISSED with prejudice** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) because his claims are frivolous and/or fail to

state a claim on which relief may be granted. The Court further **ORDERS** that the dismissal of this case count as a “strike” for purposes of 28 U.S.C. § 1915(g) and the Clerk of Court is **INSTRUCTED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

ORDERED on September 19, 2023.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE